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**Before the
Federal Communications Commission
Washington, D.C. 20554**

FILED/ACCEPTED

DEC 21 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Implementation of Section 224 of the Act;)	WC Docket No. 07-245
Amendment of the Commission's Rules and)	
Policies Governing Pole Attachments)	RM-11293
)	
)	RM-11303

TO: THE COMMISSION

MOTION FOR EXTENSION OF TIME

Virginia Electric and Power Company ("Dominion Virginia Power") and utility operating subsidiaries of Ameren Corporation ("Ameren"), investor-owned electric utilities represented by the law firm of Troutman Sanders, LLP, respectfully move the Federal Communications Commission ("FCC" or "Commission"), pursuant to Sections 1.46(b) and 1.415(e) of the Commission's rules¹ for an order extending the time for the filing of initial comments and reply comments in the above-captioned proceeding.

According to the NOTICE OF PROPOSED RULEMAKING ("NPRM") released on November 20, 2007,² initial comments are due thirty (30) days after publication of the NPRM in the *Federal Register*. Reply comments are due thirty (30) days thereafter. Ameren and Dominion Virginia Power respectfully move the Commission for an order that extends: (1) the deadline for filing initial comments until ninety (90) days after the NPRM is published in the *Federal Register*; and

¹ 47 C.F.R. §§ 1.46(b) and 1.415(e).

² In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, **NOTICE OF PROPOSED RULEMAKING**, FCC 07-187, WC Docket No. 07-245, 2007 WL 4145571 (rel. Nov. 20, 2007).

(2) the deadline for filing reply comments until one hundred twenty (120) days after the date on which initial comments are due.

In support of this request, Ameren and Dominion Virginia Power show as follows.

The Commission has initiated the NPRM “in order to consider comprehensively the appropriate changes, if any, to our implementation of section 224.” To that end, the Commission exhorts “commenters to assist us in compiling a record that will create, to the extent possible, a context into which we can place the experiences of utilities, attachers, state commissions, end users, and others in the decade since the Commission began to implement the 1996 Act.” 2007 WL 4145571, at ¶¶ 2, 3. Simply put, the scope of the NPRM is vast. It is a complete reexamination of the entire body of pole attachment law and regulation that has developed over the last thirty (30) years, and particularly in the decade following the Commission’s implementation of the *Telecommunications Act of 1996*.

The extensive record that the Commission envisions – and that, indeed, is essential if the Commission is to succeed in achieving its stated objective – cannot be developed in a mere thirty (30) days, especially when, depending upon the date of publication in the *Federal Register*, that thirty-day period may include the year-end holiday season. Indeed, when the State of New York, a state that has pre-empted FCC pole attachment dispute resolution jurisdiction, embarked on a similar, though less comprehensive, “generic proceeding for the purpose of identifying and addressing unresolved issues concerning pole attachments,” the comments, reply comments and collaborative meetings took nearly a full year to complete.³

³ See, *Order Adopting Policy Statement on Pole Attachments*, in Case 03-M-0432, issued by the State of New York Public Service Commission and effective August 6, 2004.

In the NPRM, the Commission poses a series of broad and open-ended questions, many of which request factual data that may not be readily available. For example, in Paragraph 13 alone, 2007 WL 4145571 at 3, the Commission asks:

- With respect to the “current state of pole attachments, ducts, conduits, and rights-of-way, and the relationship between these facilities and the competitive telecommunications market...we seek data on the nature and scope of pole attachments by the various types of providers.”
- “[H]ow many poles and how much conduit do the different types of providers or different network architectures access pursuant to section 224? In a typical metropolitan area, how many poles have three attachments or fewer, and how many support so many users that they are approaching full capacity? In addition to amassing price and usage data, we seek comment on how pole attachment price and usage by various different types of providers affect the larger goals of the Act.”
- “We also seek information regarding how many pole attachments are used to offer, among other services, broadband Internet access service, and conversely, how many pole attachments are not used to offer such services.”

Another example of this proceeding’s wide reach is Paragraph 15 where the Commission elicits “data that may shed light on how many poles incumbent LECs own or control compared with the number of poles owned or controlled by electric utilities.” *Id.* at 4.

These four questions alone seek data the compilation, analysis and submission of which will require significantly more than thirty (30) days. An adequate response to the NPRM would require even more. The Commission poses approximately 80 questions that delve into virtually every aspect and nuance of pole attachment rates, terms, conditions, practices and experience over the last ten (10) years. This task demands considerable consultation, collaboration with utility operational and business personnel, and legal draftsmanship.

Thus, even at the outset of this proceeding and despite work that has already taken place since the release of the NPRM, it is plain that thirty (30) days from publication in the *Federal Register* will be inadequate to accomplish these tasks. It would be effectively impossible to

develop the comprehensive rulemaking record that the Commission anticipates – a rulemaking record that is most likely to contain substantial evidence, as affected stakeholders, including utilities and attachers, have the right to demand. **THE MINIMUM TIME IN WHICH THIS MULTITUDE OF TASKS REASONABLY COULD BE ACCOMPLISHED IS NINETY (90) DAYS FROM PUBLICATION OF THE NPRM IN THE *FEDERAL REGISTER*.**

As a practical matter, the wide-ranging scope of the proceeding and the multitude of affected constituencies guarantee that thousands of pages of comments and supporting data will be filed. It is virtually certain that the analysis of, and response to, these voluminous submissions will require even more time than the preparation of initial comments and supporting information. Thus, a much more realistic time period for preparing and submitting reply comments is one hundred twenty (120) days from the deadline for submitting initial comments.

This proceeding is a vast and comprehensive reexamination of federal pole attachment law and policy, on a par in importance and scope with the Commission's implementation of the pole attachment provisions of the *Telecommunications Act of 1996* in CS Docket Nos. 97-98 and 97-151, proceedings where extensions were similarly justified and granted.⁴ The important objective of advancing the goals of the *Telecommunications Act of 1996*, especially with regard to broadband deployment – coupled with important considerations of fairness and due process to utilities, attaching entities, and other affected constituencies and affected parties – demands that a complete, fully developed and sound rulemaking record be developed at a pace that, in

⁴ See, Order, DA-97-894, 13 FCC Rcd 4116 (1997) (granting an extension of the comment period in CS Docket No. 97-98 because of the complexity of the issues and to facilitate development of a complete record); and Order, DA 97-2181, 13 FCC Rcd 7959 (1997) (granting an extension of time to file reply comments in CS Docket No. 97-151 where the volume of initial comments was "prolific" and addressed complex administrative and technical issues.)

retrospect or with hindsight, would not be viewed as a precipitous rush to judgment. The Commission, however, will not get such a record in the time it has presently allotted.

The extensions sought herein are reasonable, well-founded and not requested for the purpose of delay. The Commission's goal updating thirty years of pole attachment policy and regulation will not be hampered by taking the additional time requested herein in order to develop the record desired by the Commission. There is a danger, however, that failure to take adequate time to develop the record would result in policies and regulations that, in the long run, would not be sustainable.

WHEREFORE, Ameren and Dominion Virginia Power respectfully move the Commission to enter an order that extends the period for the filing of initial and reply comments as follows: (1) initial comments are to be filed *ninety (90) days* from publication in the *Federal Register*; and (2) the deadline for reply comments is one hundred twenty (120) days after the deadline for the submission of initial comments.

Respectfully submitted,

A handwritten signature in black ink, reading "Raymond A. Kowalski". The signature is fluid and cursive, with the first name "Raymond" being the most prominent part.

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